

# EVAN McMULLIN

FOR PRESIDENT

February 9, 2017

Federal Election Commission  
Office of Complaints Examination and Legal Administration  
Attn: Mary Beth deBeau, Paralegal  
999 E Street, NW  
Washington, DC 20463

Re: MUR 7206 -- Response on behalf of McMullin for President Committee, Inc.,  
Jeffrey Carson, Treasurer, to the Complaint Filed by Robert Breeze

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COMMISSION  
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Dear Ms. deBeau:

On behalf of McMullin for President Committee, Inc. ("Committee"), Jeffrey Carson, Treasurer, I hereby respond to the Complaint in MUR 7206, filed by Mr. Robert Breeze. The Complaint alleges *KSL*<sup>1</sup> and *Deseret News* ("media outlets") made unreported contributions and expenditures on behalf of the Committee through "fake news" coverage disproportionate to the coverage of other "independent and small party candidates." Complaint at 1. As explained herein, the challenged coverage was legitimate press activity over which the Federal Election Commission ("Commission") lacks jurisdiction. Even assuming, *arguendo*, jurisdiction exists over this matter, I respectfully urge dismissal of this conjecture through the Commission's prosecutorial discretion. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

## I. Factual Background

Evan McMullin ran as a presidential candidate in the 2016 General Election. In relevant part, he was born in Utah, graduated college in Utah, had his strongest base of support in Utah, and headquartered his campaign in Utah (as well as Washington D.C.). His campaign garnered national media attention and significant attention in Utah, including from the media outlets.

Among 66 Utah polls, McMullin was the only candidate to ever lead in the state polls aside from the two major party candidates. See *FivethirtyEight.com, Who Will Win Utah?* <https://projects.fivethirtyeight.com/2016-election-forecast/utah/> (last visited Jan. 8, 2017). He ultimately received 21.54% of the popular vote in Utah, the highest vote recipient after the two major party candidates. By comparison, the next two highest vote recipients, Gary Johnson and

<sup>1</sup> The Utah Division of Corporations and Commercial Code's business search reflects multiple active radio and television broadcast entities with "KSL" in their names. The analysis herein applies with equal force to all of these entities, as they appear to share management.

Jill Stein, received 3.5% and 0.83%, respectively. See Utah Lt. Governor's Office, Utah Election Preliminary Results, <https://electionresults.utah.gov/elections/federal> (last visited Jan. 8, 2017).

## II. Press Exemption Precludes Jurisdiction Over Claims

The Commission lacks jurisdiction over the Complaint's allegations because the media outlets' editorial decisions fall within the "press exemption" (also referred to as the "media exemption"). As such, the Commission should dismiss this Complaint for lack of jurisdiction.

The Federal Election Campaign Act of 1971, as amended ("Act"), regulates contributions and expenditures, and the reporting thereof. Under the Commission's rules, any broadcasting station or newspaper's costs incurred in covering or carrying a news story, commentary, or editorial do not constitute contributions or expenditures unless the media outlet is owned or controlled by any political party, political committee, or candidate. 11 C.F.R. §§ 100.73, 100.32. This press exemption is based on the First Amendment's foundational Free Press Clause, which protects the press's right to comment on political matters. Indeed, the press exemption is so robust that even allegations of coordination—otherwise a hallmark for contribution and expenditure reporting—"are of no import when applying the press exemption." MURs 5540 & 5545 (CBS, Kerry/Edwards 2004), Statement of Reasons of Vice Chairman Michael Toner, Commissioners David Mason and Bradley Smith at 3. (Attachment 1) "It is not for [the Commission] to determine what is a 'legitimate news story'" when considering the press exemption. *Id.* at 2.

The Commission's investigation and enforcement against press entities may proceed only after determining that the exemption does not apply to the challenged activity. MUR 6952 (Fox News Network, LLC), Statement of Reasons of Chairman Matthew Petersen, Commissioners Caroline Hunter and Lee Goodman at 7. (Attachment 2) The determination involves a two-step inquiry:

- (1) Is the press entity owned or operated by a political party, political committee, or candidate; and
- (2) Is the organization operating as a press entity in taking the action complained of?

*Id.* (citing *Fed. Election Com. v. Phillips Pub., Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981) and *Reader's Digest Asso. v. Fed. Election Com.*, 509 F. Supp. 1214, 1214 (S.D.N.Y. 1981)).

With respect to the first question, the Complaint neither provides facts nor even asserts that the media outlets are owned or operated by entities not entitled to the press exemption. Rather, the Complaint focuses on the latter question. It alleges that the coverage of McMullin "does not constitute a bona fide news story" because the media outlets' management promoted McMullin out of opposition to another candidate, not due to newsworthiness. Complaint at 2. Mr. Breeze props up his allegations with ad hominem attacks and internet search results about coverage for Johnson and Stein. *Id.*

As to the second question, the media outlets acted as press entities in determining the most fitting balance of coverage among McMullin and other non-major party candidates for their particular audiences. "The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment." *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256 (1974); *see also Columbia Broad. Sys. v. Democratic Nat'l Cmte*, 412 U.S. 94, 117 (1973). Moreover, to the extent—if any—that media outlets management favored a particular candidate, "the press exemption applies regardless of whether the news story, commentary, or editorial contains express advocacy. Media entities routinely endorse candidates, and the media exemption protects their right to do so." Fed. Election Comm'n., *Internet Communications*, 71 Fed. Reg. 18,589, 18,609 (Apr. 12, 2006).

Thus, the press exemption leaves the Commission without jurisdiction over this matter.

### **III. Prosecutorial Discretion Disfavors Further Investigation**

While the Commission cannot reach the substantive allegations of the Complaint without jurisdiction as explained above, the Commission's own criteria for exercising prosecutorial discretion would weigh against further investigation here.

The criteria include:

(1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in law.

In a comparable matter involving a complaint that two newspapers published articles supporting one candidate and refused to cover and interview the opposing candidate, the Commission's Acting General Counsel found the matter a low priority under these criteria and recommended dismissal. The Commission unanimously agreed. MUR 6901 (Buck for Colorado), Certification. (Attachment 3)

With respect to Mr. Brecze's Complaint, the press exemption is clearly applicable and presents no grave issue. Moreover, the Complaint does not assert that the media outlets' coverage had any specific impact on the electoral process. To the extent such coverage could have had any impact, it did not sway the ultimate outcome in favor of McMullin or to the detriment of the allegedly opposed candidate. Expending further resources investigating this matter would be fruitless.







FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
	)	
CBS Broadcasting, Inc.	)	
Kerry-Edwards 2004, Inc., and	)	MURs 5540 & 5545
Robert Farmer, in his official	)	
Capacity as Treasurer	)	
	)	

**STATEMENT OF REASONS OF VICE CHAIRMAN MICHAEL E. TONER AND  
COMMISSIONERS DAVID M. MASON AND BRADLEY A. SMITH**

On June 7, 2005, by a vote of 6-0 the Commission accepted the Office of General Counsel's ("OGC") recommendation to find no reason to believe that CBS Broadcasting, Inc., Kerry-Edwards 2004, Inc. ("Campaign"), and Robert Farmer, in his official capacity as Treasurer, and the remaining respondents violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act") in connection with the September 8, 2004 broadcast of *60 Minutes Wednesday* ("Broadcast"). We voted to find no reason to believe in these matters because, even if the allegations in the complaint are true, the activities in question are protected by the Act's media exemption and require the complaints to be dismissed.

**Analysis and Conclusions**

These matters arose out of complaints filed by the Center for Individual Freedom ("Complainant") alleging that the broadcast of a *60 Minutes Wednesday* news story about President Bush's Texas Air National Guard Service was a prohibited electioneering communication under 2 U.S.C. § 434(f), that the electioneering communication was coordinated with the Kerry-Edwards campaign and was therefore a prohibited corporate contribution under 2 U.S.C. § 441b(a) and (c), that the electioneering communication should have been reported by CBS as a contribution and the Kerry-Edwards campaign as an expenditure under 2 U.S.C. § 434(f), and that the broadcast constituted an independent expenditure and a prohibited corporate contribution. Both complaints alleged that the broadcast was not entitled to the press exemption found at § 431(S)(B)(i) because CBS failed to thoroughly verify its news sources and improperly coordinated with the Kerry-Edwards campaign, and the broadcast did not fit the definition of a news story,

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commentary, or editorial under 11 CFR §100.73 because it expressly advocated the defeat of President Bush.

FECA prohibits corporations from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b. Notwithstanding this prohibition, FECA's media exemption excludes from the definition of expenditure "any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine or other periodical publication." 2 U.S.C. § 431(9)(B)(i). See also 11 C.F.R. §§ 100.73 and 100.132. Additionally, any communication "appearing in a news story, commentary, or editorial distributed through the facilities of any broadcast station" is excluded from the definition of an electioneering communication. 2 U.S.C. § 434(f)(3)(B).

Federal courts, when considering whether an entity is within the Act's media exemption, have held that several factors must be present: the entity engaged in the activity must be a press entity; the press entity must not be owned or controlled by a political party or candidate; and the press entity must be acting as a press entity in conducting the activity at issue (i.e., the entity must be acting within its legitimate press function). See *Reader's Digest Ass'n v. Fed. Election Comm'n*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981), *Fed. Election Comm'n v. Phillips Publ'g, Inc.*, 517 F. Supp. 1308, 1312-12 (D.D.C. 1981).

In the present case, the complaint alleged that CBS and the Kerry-Edwards campaign had been in contact a few days before the broadcast aired, and that representatives of CBS News arranged a meeting between the key source of the story and a representative of the Kerry-Edwards campaign. Complaint at 4. The complaint also alleged that because "the broadcast segment lacked all of the hallmarks of a legitimate 'news story' and responsible journalism," the press exemption should not apply. Complaint at 10.

It is not for this agency to determine what is a "legitimate news story" or who is a "responsible journalist." In reviewing the allegations in these complaints, the Commission's inquiry is limited to determining whether a "press entity charged with a violation is owned or controlled by a party or candidate and whether the distribution complained of was of the type exempted by the statute...No inquiry may be addressed to sources of information, research, motivation, connection with the campaign, etc. Indeed all such investigation is permanently barred by the statute unless it is shown that the press exemption is not applicable." *Reader's Digest*, 509 F. Supp. at 1214-15. See also MUR 3624 Walter H. Shapiro (concluding that pro-Bush/Quayle broadcast by Rush Limbaugh fell within the media exemption even though the broadcast was arguably biased).

The initial inquiries as to whether CBS is owned or controlled by a party or a candidate and whether the airing of the *60 Minutes Wednesday* broadcast was within the press exemption require no further investigation. CBS is not owned by a political party, committee or candidate and is in the business of disseminating news stories, commentary, and editorials to the public. First General Counsel's Report at 5. Additionally, 60

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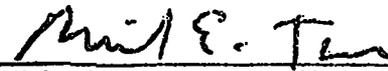
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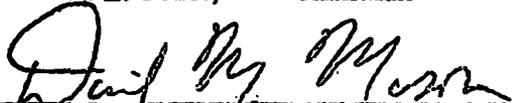
*Minutes* is one of CBS's regularly scheduled programs and the Broadcast appeared on a regularly scheduled *60 Minutes* program. *Id.* Also significant is the fact that the Broadcast appeared to be similar in form and was distributed in the same manner as other *60 Minutes* news stories. *Id.* at 6. *Contra Fed. Election Comm'n v. Massachusetts Citizens for Life*, 479 U.S. 238, 250 (1986) (noting that the publication at issue was not "comparable to any single issue of the newsletter [since] it was not published through the facilities of the regular newsletter... was not distributed to the newsletter's regular audience... [and did not have a] volume and issue number identifying it as one in a continuing series of issues").

Allegations of coordination are of no import when applying the press exemption. What a press entity says in broadcasts, news stories and editorials is absolutely protected under the press exemption, regardless of whether any activities occurred that might otherwise constitute coordination under Commission regulations.

For all the foregoing reasons, we voted in favor of the General Counsel's recommendation to find no reason to believe and close the files.

July 11, 2005

  
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Michael E. Toner, Vice Chairman

  
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David M. Mason, Commissioner

  
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Bradley A. Smith, Commissioner

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 6952  
Fox News Network, LLC )

STATEMENT OF REASONS OF  
CHAIRMAN MATTHEW S. PETERSEN AND  
COMMISSIONERS CAROLINE C. HUNTER AND LEE E. GOODMAN

In May of 2015, Fox News Network, LLC ("Fox News"), announced that it would host a debate on August 6, 2015, featuring Republican candidates seeking their party's presidential nomination. As the summer of 2015 unfolded, a large field of more than a dozen diverse Republican candidates garnered significant public interest. To give the American people an opportunity to hear from as many candidates as was practical, Fox News decided to sponsor two debates rather than one. One debate would feature the top ten polling candidates and for the second, the so-called "undercard debate," Fox News ultimately chose to invite *any* candidate who was merely identified as a candidate in national polls, without requiring minimum poll numbers. Invitations based on these criteria resulted in two debates featuring a total of seventeen candidates.

Astonishingly, the Office of General Counsel concluded that Fox News made a prohibited corporate contribution to the candidates in violation of the Federal Election Campaign Act, as amended (the "Act"), by opening participation in its debates to a broader set of candidates than it initially contemplated.<sup>1</sup> Two of our fellow commissioners agreed. They also agreed with the Office of General Counsel's recommendation that the Commission should penalize Fox News, while the remaining commissioner agreed that Fox News was subject to regulation but voted to dismiss the matter in an exercise of "discretion."<sup>2</sup> Both of these alternatives, however, presume that the Commission may punish a press entity based on who it chooses to question in a debate and how it questions them.

This matter thus forces the Commission to confront a legal issue it has carefully avoided for 35 years. That is, we must now reconcile the core freedom of the press under the First Amendment to the Constitution, as well as the Act's corresponding jurisdictional limitation upon the Commission, with the Commission's assertion of the power to dictate whom press entities

<sup>1</sup> See First General Counsel's Report at 8 (recommending that the Commission find reason to believe Fox News violated 52 U.S.C. § 30118(a)); Amended Certification ¶ 1 (May 24, 2016) (Commissioners Ravel and Walther voted to find reason to believe Fox News violated 52 U.S.C. § 30118(a) and approve the factual and legal analysis proposed by the Office of General Counsel); Amended Certification ¶ 2 (May 24, 2016) (Commissioner Weintraub voted to dismiss this matter as an exercise of prosecutorial discretion).

<sup>2</sup> Amended Certification ¶ 1 (May 24, 2016) (Commissioners Ravel and Walther voted to authorize conciliation on the terms proposed by the Office of General Counsel); Amended Certification ¶ 2 (May 24, 2016) (Commissioner Weintraub voted to dismiss this matter as an exercise of prosecutorial discretion).

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invite to candidate debates they host, moderate, and televise, and how they conduct those debates.

Only once in its history has the Commission threatened a press entity for hosting a candidate debate. In 1980, the Commission informed the *Nashua Telegraph* that it found reason to believe the newspaper was about to make a corporate contribution by hosting a debate three days later and that the Commission had authorized its counsel to seek an injunction to stop that debate.<sup>3</sup> As a result, then-candidate Ronald Reagan's campaign committee paid for the debate. When the moderator tried to cut off Reagan's microphone, Reagan famously refused by saying to great effect and applause, "I am paying for this microphone."<sup>4</sup>

But soon after that incident, two seminal court decisions in the early 1980's explicated press rights<sup>5</sup> and the Federal Communications Commission determined that hosting candidate debates is news coverage.<sup>6</sup> Since then, the Commission has not asserted that press entities violated the Act by hosting candidate debates, much less threatened to punish a press entity for doing so. Indeed, the issue was seemingly resolved in 2002, when a bipartisan majority of commissioners announced that a press entity's sponsorship of a candidate debate was categorically a press function that could not be regulated by the Commission.<sup>7</sup>

Nevertheless, in a drastic turn, several of our colleagues and the Office of General Counsel would have this agency regulate and punish newsroom decisions *as a matter of campaign finance regulation* in defiance of the Constitution and the plain letter of the Act. Our colleagues' position, and that of the Office of General Counsel, is all the more baffling because Fox News chose to let every candidate who was the subject of national polls into its debates instead of limiting the field to a favored subset—for a total of seventeen participants—precluding any determination that it favored a select few and thereby made a prohibited corporate contribution.

The last time this issue was presented, over two years ago, our colleagues voted against recognizing the press exemption, but argued they were merely disposing of the matter on a

<sup>3</sup> See Ltr. to Telegraph Publishing Company (Feb. 20, 1980), MURs 1167, 1168, 1170 (Nashua Telegraph) (informing newspaper's publisher that the Commission found reason to believe it violated the Act's prohibition against making corporate expenditures, instructing it to answer several questions by the following day, and warning that the Commission had already authorized its counsel to seek an injunction to stop the newspaper's debate between candidates Ronald Reagan and George Bush scheduled to take place in three days because respondent did not invite other qualified candidates).

<sup>4</sup> See <http://www.cbsnews.com/videos/ronald-reagan-at-1980-gop-debate-i-am-paying-for-this-microphone/>

<sup>5</sup> See *Readers Digest Ass'n. Inc v. FEC*, 509 F.Supp. 1210,1214 (S.D.N.Y. 1981); *FEC v. Phillips Publishing, Inc.*, 517 F.Supp. 1308, 1313 (D.D.C. 1981).

<sup>6</sup> See Regarding Petitions of Henry Geller and the National Association of Broadcasters and the Radio-Television News Directors Association to Change Commission Interpretation of Certain Subsections of the Communications Act ("Geller Order"), 43 Fed. Reg. 53166, 53166-71 (Nov. 25, 1983).<sup>7</sup> MUR 5224 (WZB-TV and Boston Globe), Statement of Reasons of Chairman David Mason, Vice Chairman Karl Sandstrom, Commissioner Bradley Smith and Commissioner Michael Toner at 2.

<sup>7</sup> MUR 5224 (WZB-TV and Boston Globe), Statement of Reasons of Chairman David Mason, Vice Chairman Karl Sandstrom, Commissioner Bradley Smith and Commissioner Michael Toner at 2.

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narrow legal basis—compliance with the debate regulation. Although we expressed misgivings then about the doctrinal importance of the press exemption,<sup>8</sup> we acquiesced to a dismissal on the narrower grounds of the debate regulation.<sup>9</sup> Given the Office of General Counsel's recommendation and our colleagues' votes in this matter, this compromise is no longer tenable. The Commission's debate regulation cannot be used to impose government restrictions on newsroom decisions and to punish, and even censor, American press organizations. We can no longer agree to avoid addressing freedom of the press. As we have been warning in matter after matter, our colleagues' desire to use this agency's authority to regulate and punish the press and media warrants more robust scrutiny and a civil public debate.<sup>10</sup>

As explained below, we declined to support our colleague's motion to approve the recommendations of the Office of General Counsel to punish Fox News for hosting these debates because Fox News's sponsorship of these debates was squarely within its press function and thus protected from the Commission's regulation under the press exemption and the free press clause of the First Amendment. Further, Fox News in fact complied with the Commission's debate regulation, which the Commission has previously concluded satisfies the press exemption when the debate sponsor is a press entity.

### I. BACKGROUND

Fox News, a limited liability company ("LLC") registered with the State of New York, is a broadcaster that owns and operates two national cable television networks — the Fox News Channel and the Fox Business Network — and is a subsidiary of Twenty-First Century Fox, Inc.<sup>11</sup> In January 2015, the Republican National Committee announced plans for twelve Republican presidential debates to be hosted by various news organizations throughout 2015 and 2016.<sup>12</sup> Fox News was selected to organize, moderate, and televise the first debate, which was to

<sup>8</sup> MUR 6762 (WCVB-TV), Statement of Reasons of Vice Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Peterson; Lee E. Goodman, *The Feds Flirt With Reining in TV Talk: A TV Station Invites Two Candidates to Debate. Has It Made an Illegal Contribution to Their Campaigns?*, WALL STREET JOURNAL (Feb. 4, 2014).

<sup>9</sup> MUR 6703 (WCVB-TV), Certification ¶ 1 (Nov. 19, 2013); MUR 6703 (WCVB-TV), Statement of Reasons of Vice Chairman Lee E. Goodman and Commissioners Caroline C. Hunter and Matthew S. Peterson.

<sup>10</sup> See MUR 6779 (Joel Gilbert; Highway 61 Entertainment, LLC); MUR 6703 (WCVB-TV & Hearst Stations); MUR 6320 (Sean Hannity); AO 2010-25 (RG Entertainment); see also Statement of Commissioner Steven T. Walther, AO 2010-08 (Citizens United) ("In light of the *Citizen United* decision, it would be my hope that the Commission will revisit the breadth of the Act's press exemption, and its policy underpinnings, as part of our rulemaking proceeding."); Audio Recording of Commission Open Meeting Held on July 23, 2014, at 24:00-25:50, AO 2014-06 (Paul Ryan for Congress) (statement by Commissioner Weisraub that a 1967 advisory opinion of the Commission concluded that "books don't appear to be covered by the media exemption. What we call the media exemption, oddly enough, doesn't use the word 'media' and doesn't use the word 'press' . . . . I don't know why Congress wrote the word 'periodical publication' in there but they did and we are constrained in interpreting that particular provision to interpret that particular provision and the words that it uses.").

<sup>11</sup> Resp. at 3; Company Overview of FOX News Network, LLC, <http://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=4245059> (last visited Mar. 29, 2016).

<sup>12</sup> Resp. at 2.

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be held on August 6, 2015, at the Quicken Loans Arena in Cleveland, Ohio.<sup>13</sup> Fox News' Executive Vice President of News (Editorial) Michael Clemente announced that Fox News would select candidates to participate in its debate according to certain criteria that would require, among other things, that a candidate place in the top ten of an average of the five most recent national polls, as recognized by Fox News, leading up to August 4, 2015 at 5:00 p.m.<sup>14</sup>

On June 11, 2015, Fox News announced that it would expand the opportunity for candidate participation by staging and broadcasting an additional debate on August 6, 2015.<sup>15</sup> This additional debate would be open to Republican presidential candidates who did not poll among the top ten, and therefore did not qualify for the main debate, but who received the support of at least 1% of poll respondents in an average of the five most recent national polls, as recognized by Fox News, leading up to August 4, 2015 at 5:00 p.m.<sup>15</sup>

On July 27, 2015, 10 days before the debate was to be held and eight days before the previously announced criteria for the undercard debate would operate to choose the participants, Fox News announced it would further expand the eligibility criteria for the second-tier debate. Specifically, Fox News announced it would include in the second-tier debate all candidates whose names were "consistently . . . offered to respondents in major national polls (as recognized by Fox News) leading up to August 4."<sup>17</sup> Mr. Clemente stated Fox News changed its criterion "[d]ue to the overwhelming interest" in the debate and "a concerted effort to include and accommodate the now 16 Republican candidate field."<sup>18</sup>

In addition to the ten candidates who satisfied the criteria for the top-tier debate, seven additional candidates' names were included in the five most recent national polls recognized by Fox, as of August 4, 2015. Fox News therefore included these seven candidates in the second-tier debate.<sup>19</sup>

<sup>13</sup> *Id.*; see Press Release, *Fox News And Facebook Partner To Host First Republican Presidential Primary Debate of 2016 Election* (May 2015), <http://press.foxnews.com/2015/05/fox-news-and-facebook-partner-to-host-first-republican-presidential-primary-debate-of-2016-election/> (Resp. Attach. A).

<sup>14</sup> Compl. at 2; Resp. at 2.

<sup>15</sup> Resp. at 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 3.

<sup>18</sup> In full, the relevant portion of Clemente's reported statement was: "Due to the overwhelming interest in the FOX News Facebook Debate Event Night on August 6th and in a concerted effort to include and accommodate the now 16 Republican candidate field — the largest in modern political history — FOX News is expanding participation in the 5 PM/ET debate to all declared candidates whose names are consistently being offered to Fox News in major national polls, as recognized by Fox News." Mike Allen, *Fox Lowers Threshold For Early Debate*, POLITICO (July 28, 2015), <http://www.politico.com/story/2015/07/fox-republican-debate-lowers-threshold-120748#ixzz3rselFY> [hereinafter "POLITICO Article"] (attached to Response as Attachment B).

<sup>19</sup> Resp. at 2-4.

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Complainant was a candidate for the Republican presidential nomination in 2016.<sup>20</sup> The Complaint alleges Fox News violated the Commission's regulations governing candidate debates by excluding him from the debate it organized, moderated, and televised on August 6, 2015.<sup>21</sup> Specifically, the Complaint alleges that Fox News failed to apply pre-established and objective candidate selection criteria in violation of 11 C.F.R. § 110.13(c), focusing on what the Complaint terms as Fox News's "last minute" switch in the selection criteria.<sup>22</sup> The Complaint challenges Fox News's right to make a "last minute" change to debate participation criteria ten days before the scheduled debate, which would include candidates whose names were "consistently" offered to respondents in national polls, and argues that "consistently" is not an objective standard, as required under the Commission's debate regulation.<sup>23</sup> The Complaint asserts that Fox News "does not provide any enlightenment or even any guidance to the candidates and their organizations on how it, as the sole arbiter, will define 'consistently'; nor does it give even a hint about which 'major national polls' it . . . will use to test eligibility."<sup>24</sup>

In addition, the Complaint asserts that Fox News was prohibited from selecting the candidates that it deemed newsworthy to participate in a debate that it televised as news programming. The Complaint points to the statement by Clemente — that "[w]e made a concerted effort to include and accommodate the now 16 Republican candidate field" — to argue that Fox News illegally selected 16 candidates, excluding him.<sup>25</sup> Finally, the Complaint argues that Fox News was legally required to use a Republican National Committee online straw poll — which it argues is "a solid reflection of 'real' GOP candidates [that] objectively draws the line between serious and inconsequential candidates" — a choice that would have included the Complainant in the debate as the 18<sup>th</sup> candidate, but no additional candidates.<sup>26</sup>

Fox News denies it selected candidates illegally and asserts that it modified its original selection criteria to expand, not selectively restrict, the opportunity for more candidates to participate in the debate.<sup>27</sup> Fox News maintains that its amended criteria were established in

<sup>20</sup> See Mark Everson, Statement of Candidacy (Mar. 10, 2015); Compl. at 1. On November 5, 2015, Everson ended his campaign. See <https://web.archive.org/web/20160313000657/http://markforamerica.com/> (last visited Mar. 29, 2016).

<sup>21</sup> Compl. at 1, 3.

<sup>22</sup> *Id.* at 3-7. The Complaint also states that Fox News structured the debate in violation of 11 C.F.R. § 110.13(b)(2), see Compl. at 5-6, which forbids conducting the debate in a manner which promotes or advances one candidate over another. See 11 C.F.R. § 110.13(b)(2); *Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates*, 60 Fed. Reg. 64260, 64262 (Dec. 14, 1995). The content of the Complaint's allegations, however, is confined to Fox News' participant selection criteria rather than the debate structure. Accordingly, there is no reason to believe that Fox News violated 11 C.F.R. § 110.13(b)(2).

<sup>23</sup> Compl. at 4.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at 5-6.

<sup>26</sup> *Id.* at 6.

<sup>27</sup> Resp. at 1-3.

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## ATTACHMENT 2

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committee, or candidate."<sup>35</sup> Congress explained that it enacted the press exemption to protect the press's core First Amendment right to comment upon political matters without interference by the federal government:

[I]t is not the intent of the Congress in the present legislation to limit or burden in any way the first amendment freedoms of the press and of association. Thus the exclusion assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.<sup>36</sup>

Thus, at bottom, the press exemption is a statutory recognition of the First Amendment's Free Press Clause and the profoundly important role the press plays in the political affairs of our country.<sup>37</sup> Congress's stated intent to prohibit the Commission from "limit[ing] or burden[ing] in any way" the press's exercise of editorial decisions makes the press exemption a limit upon the Commission's jurisdiction. The Commission can proceed to examine a press entity's activities only if the Commission first determines the exemption does not apply.<sup>38</sup> Thus, if the press exemption applies, "the FEC lacks subject matter jurisdiction and is barred from investigating the subject matter of the complaint."<sup>39</sup>

Courts interpreting the freedom of the press have established a two-step analysis for conducting this threshold inquiry: (1) whether the press entity is owned or operated by a political party, candidate or political committee; and (2) whether the organization is operating as a press entity in taking the action complained of.<sup>40</sup> The Supreme Court has supplied touchstones for determining whether an organization is acting as a press entity, including whether its publication, in this case a televised news program or debate, is published and disseminated in the ordinary course of the publisher's regular press activities.<sup>41</sup>

The Commission has implemented the press exemption in a wide variety of contexts. For example, the Commission has concluded that television stations and newspapers are exempt from the Act's regulation when they provide free and unfettered airtime or print space to

<sup>35</sup> 2 U.S.C. § 431(9)(B)(i). The Commission has incorporated this exemption into its regulations at 11 C.F.R. § 100.73 (excluding from the definition of contribution news stories and commentary) and 11 C.F.R. § 100.132 (same as to expenditure).

<sup>36</sup> H.R. Rep. No. 93-1239, 93d Congress, 2d Sess. at 4 (1974).

<sup>37</sup> U.S. Const. Amend. I ("Congress shall make no law . . . abridging the freedom of the press.");

<sup>38</sup> See *Readers Digest Ass'n, Inc. v. FEC*, 509 F.Supp. 1210, 1214 (S.D.N.Y. 1981); MUR 5110 (KBHK Channel 45); MUR 5162 (ABC News); MUR 4689 (Dornan), Statement of Reasons of Vice Chairman Darryl R. Wold and Commissioners Lee Ann Elliott, David M. Mason and Karl J. Sandstrom.

<sup>39</sup> *FEC v. Phillips Publishing, Inc.*, 517 F.Supp. 1309, 1313 (D.D.C. 1981).

<sup>40</sup> *Phillips Publishing*, 517 F.Supp. at 1313; *Readers Digest*, 509 F.Supp. at 1214.

<sup>41</sup> *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 250-51 (1986).

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function.<sup>47</sup> Accordingly, its sponsorship of the debate is protected from Commission regulation by the press exemption.

Nevertheless, to the extent a legitimate press function must be proven, the facts in this regard are overwhelming: Fox News's judgments regarding the debate were made by its news department and announced by its Executive Vice President of News Editorial.<sup>48</sup> Fox News incorporated the debate into its regular course of news coverage and programming, presenting the debate across all of its news platforms, television on Fox News, radio on Fox News Radio, mobile on Fox News Mobile and online at FoxNews.com.<sup>49</sup> Experienced Fox News anchors Bret Baier, Megyn Kelly, and Chris Wallace moderated the main debate while political journalists Bill Hemmer and Martha MacCallum moderated the second-tier debate.<sup>50</sup> Ultimately, Fox News's decision to interview and broadcast 10, or 16, or 17 candidates on one or two debate stages was a wholly legitimate exercise of its editorial and journalistic discretion entitled to the full protection of the press exemption.

Fox News also made the obvious judgment that it could not accommodate the "approximately 130 declared Republican presidential candidates,"<sup>51</sup> but nonetheless "endeavored to be inclusive to the extent practicable."<sup>52</sup> Fox News thus made two newsroom judgments to provide the public expanded coverage and information about as broad a field of candidates as practicable. First, it decided to moderate and cover two debates instead of one. This afforded the public an opportunity to hear from more than the 10 candidates selected to participate in the main debate. Second, Fox News decided to expand its selection criteria. Fox News's decision to expand the participation criteria in response to "growing public interest in hearing from a broad array of candidates" and "in a concerted effort to include and accommodate the now 16 Republican candidate field"<sup>53</sup> — that is, to include additional candidates — is wholly consistent with an editorial judgment that 16 candidates were *newsworthy* and viewers would benefit from hearing from additional candidates.<sup>54</sup> Accordingly, the press exemption plainly exempts Fox News's sponsorship of the August 6, 2015 debate.

<sup>47</sup> The Federal Communications Commission has determined that debates sponsored by broadcasters is news coverage. See *Regarding Petitions of Henry Geller and the National Association of Broadcasters and the Radio-Television News Directors Association to Change Commission Interpretation of Certain Subsections of the Commun*

<sup>48</sup> Resp. at Attachment A.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at Attachment B.

<sup>51</sup> *Id.* at 1.

<sup>52</sup> *Id.* at 2.

<sup>53</sup> *Id.* at 5 (quoting POLITICO Article, *supra*) (emphasis added). Although Clements mentioned a 16-candidate field, a total of 17 candidates participated in either the top-tier or second-tier debate.

<sup>54</sup> *Id.* There is a lurking absurdity in our colleague's interpretation of the interplay between the Commission's debate regulation and the Act's press exemption. If, as they would interpret the debate regulation, a news organization makes a prohibited corporate contribution by paying for a program in which it questions 17 candidates

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### **B. Fox News Complied With the Commission's Debate Regulation and Thus Its Sponsorship of the Debates Is Exempt from Commission Regulation under the Press Exemption**

As explained below, the Commission adopted a regulation in 1979 governing the sponsorship of debates by corporations and press organizations. In 1996, the Commission harmonized its debate regulations with the Constitutional freedom of the press and the Act's press exemption by clarifying that the debate regulation serves as a safe harbor, which ensures satisfaction of the test developed by the courts to determine the application of the press exemption. Thus, if a press entity complies with the Commission's debate regulation, it *per se* operates within its press function and therefore is exempt from the Commission's regulation. Here, Fox News complied with the Commission's debate regulation when it sponsored the August 6, 2015, debates and therefore it was operating within its legitimate press function and is exempt from the Commission's regulation.

#### *1. The Commission's Debate Regulation*

Commission regulations supplement the statutory press exemption with an additional exemption from the definitions of contributions and expenditures for the sponsorship of candidate debates. The purpose of the debate rules was to provide an exception to FECA's corporate contribution ban at 52 U.S.C. § 30118(a) so that non-profit organizations and news media organizations can stage debates without being deemed to have made prohibited contributions to the candidates participating in the debates.<sup>55</sup>

Under the debate regulation, funds used or provided "to defray costs incurred in staging candidate debates" *per se* are not contributions when the debates are conducted "in accordance with the provisions of 11 C.F.R. [§§] 110.13 and 114.4(f)."<sup>56</sup> Sections 110.13 and 114.4(f), respectively, provide in relevant part that a broadcaster (including a cable television operator, programmer or producer) staging a candidate debate has "discretion" regarding how to structure its debate and "must use pre-established objective criteria to determine which candidates may participate in the debate" in order to qualify for the safe harbor protection of the regulation.

To qualify as "objective," criteria need not "be stripped of all subjectivity or be judged only in terms of tangible, arithmetical cut-offs. Rather, they must be free of 'content bias,' and not geared to the 'selection of certain pre-chosen participants.'"<sup>57</sup> In prior matters considering

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based on its participation criteria, then how can that same news organization be permitted under the press exemption, as it must, to pay for the staging, filming, and broadcasting costs to interview a single candidate (or 17 candidates individually) of its editorial choosing?

<sup>55</sup> See *Notice of Disposition of Petition for Rulemaking*, 80 Fed. Reg. 72616 (Nov. 20, 2015).

<sup>56</sup> See 11 C.F.R. § 103.92.

<sup>57</sup> MUR 6703 (WCVB-TV), *Factuel and Legal Analysis* at 5.

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the "objectivity" of debate selection criteria, the Commission and federal courts have not required rigid definitions or mathematical percentages.<sup>58</sup>

As Fox News correctly observes here, one federal court has approved the Commission's acceptance of editorial judgments such as "professional opinions of Washington bureau chiefs of major newspapers, news magazine and broadcast networks; the opinions of professional campaign managers and pollsters not employed by the candidates; the opinions of representative political scientists specializing in electoral politics; a comparison of the level of coverage on front pages of newspapers and exposure on network telecasts; and published views of prominent political commentators."<sup>59</sup>

In MURs 4451 and 4473 (Commission on Presidential Debates), the Commission explained in a Statement of Reasons that the debate regulations sought to give debate sponsors wide leeway in deciding what specific criteria to use:

During the [FEC]'s promulgation of § 110.13, the [FEC] considered the staff's recommendation to specify certain ostensibly objective selection criteria in the regulations and to expressly preclude the use of "[p]olls or other assessments of a candidate's chances in winning the nomination or election." . . . The [FEC] unanimously rejected this approach. . . . Instead, the Commission decided that the use of outside professional judgment in considering candidate potential is permissible.<sup>60</sup>

The Commission then noted that questions "can be raised regarding any candidate assessment criterion," but asking "such questions each and every time a candidate assessment criterion is used . . . would render the use of that criterion unworkable."<sup>61</sup> The Commission noted it would look for "specific evidence that a candidate assessment was 'fixed' or arranged in some manner to guarantee a preordained result," but otherwise would not "look behind and investigate every application of a candidate assessment criterion."<sup>62</sup> The Commission also recently explained that,

<sup>58</sup> See MURs 4956, 4962, 4963 (Union Leader Corp., et al.). Courts reviewing the Commission's assessment of the objectivity of debate participation criteria have acknowledged the Commission's authority to define which criteria are reasonable.

As the D.C. Circuit has noted, 11 C.F.R. § 110.13(a) "does not spell out precisely what the phrase 'objective criteria' means . . ." \* \* \* The regulation therefore does not "mandat[e] a single set of 'objective criteria' all staging organizations must follow," but rather "[gives] the individual organizations leeway to decide what specific criteria to use." \* \* \* As a result, "[t]he authority to determine what the term 'objective criteria' means rests with the agency . . . and to a lesser extent with the courts that review agency action."

*Buchanan v. FEC*, 112 F. Supp. 2d 58, 73 (D.D.C. 2000), *aff'd in part*, No. 00-5337 (D.C. Cir. Sept. 29, 2000) (internal citation omitted)

<sup>59</sup> Resp. at 6, *Buchanan*, 112 F. Supp. 2d at 70 n.11.

<sup>60</sup> MURs 4451 and 4473 (Commission on Presidential Debates), Statement of Reasons at 8.

<sup>61</sup> *Id.* at 9.

<sup>62</sup> *Id.*

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"[w]ithin the realm of reasonable criteria," it would give "great latitude" to debate sponsors' criteria for participant selection.<sup>63</sup>

Likewise, as the Commission noted in promulgating section 110.13(c), to establish that the criteria were set in advance of selecting the debate participants, staging organizations "must be able to show that their objective criteria were used to pick the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants."<sup>64</sup>

Accordingly, the debate regulation historically has been applied with great flexibility. Since the court decisions in *Phillips Publishing and Reader's Digest* in 1981, the Commission has never found a bona fide press organization failed to comply with the debate regulation.

### 2. *For Press Entities, the Debate Regulation Buttresses the Press Exemption.*

From the Commission's beginning, it has struggled doctrinally to analyze press-sponsored debates under the Free Press Clause of the Constitution, the statutory press exemption, and the debate regulation.<sup>65</sup> But eventually, the Commission reasoned these provisions actually complement one another.

The Commission's first attempt to craft a debate regulation in July 1979 omitted any mention of the press. Members of Congress, the press, and the Federal Communications Commission ("FCC") reacted to this omission -- and the necessary implication that the Commission was prohibiting press entities from sponsoring debates, as they had for decades.<sup>66</sup> Congress then disapproved the regulation.<sup>67</sup> Instead of clarifying that the press was not regulated by the debate exemption in its December 1979 version of the regulation, the Commission instead included the press in the scope of the regulation and further asserted that press sponsorship of debates was not covered by the press exemption.<sup>68</sup> The Courts subsequently decided *Phillips* and *Reader's Digest*, which concluded that the First Amendment shields press entities from the Commission's regulation. Additionally, in 1982 (and again in 1998), the Commission issued advisory opinions confirming the right of the press to provide air

<sup>63</sup> See *Notice of Disposition of Petition for Rulemaking*, 30 Fed. Reg. at 7034.

<sup>64</sup> *Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates*, 60 Fed. Reg. at 64262 (or phrase added).

<sup>65</sup> See, e.g., MUR 6703 (WCVB-TV). The Commission divided 3-3 on a vote to find no reason to believe on the basis that the Commission's jurisdiction was limited under the press exemption. As a compromise, the Commission then voted 6-0 to find no reason to believe on the basis that WCVB-TV complied with the debate regulation. MUR 6703 (WCVB-TV) Certification # 1 (Nov. 21, 2013).

<sup>66</sup> Concurring Statement of Commissioner Lee E. Goodman to the Notice of Disposition of Petition for Rulemaking on Candidate Debates at 6 (Nov. 9, 2013).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 8-9.

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time to one candidate, alone.<sup>69</sup> And in 1983, the FCC determined that debate sponsorship was bona fide news coverage.<sup>70</sup> These developments forced the Commission to reconcile its debate regulation with the press exemption.

In 1996, the Commission amended the debate regulation. In its Explanation and Justification, the Commission acknowledged its prior advisory opinions that recognized broad press freedom to donate free, unfettered time to candidates and parties, as well as court decisions interpreting the press exemption.<sup>71</sup> The Commission focused on court decisions conditioning the press exemption upon a press organization's dissemination of news and commentary "to fall broadly within the press entity's legitimate press function," and squared the debate regulation with the press exemption by observing that press organizations "can satisfy this standard" by complying with the Commission's debate regulation.<sup>72</sup> Thus, a press entity's compliance with the relatively straightforward requirements of the debate regulation establishes that it is engaging in legitimate press activity within the Act's press exemption. That is, the debate regulation is effectively a *safe harbor* for press entities that allows them to efficiently show they engaged in legitimate press activity without entangling the Commission in complicated judgments regarding legitimate press activity.<sup>73</sup> So long as a press organization conforms its debate sponsorship with the regulation, the Commission will recognize the organization's conduct as a *per se* "legitimate press function" and thus protected from regulation by the Act's press exemption.

If, however, a press entity ventures beyond the safe harbor of the regulation, its disbursements and activities may nonetheless be exempt from the definition of contribution under the press exemption, albeit without the *per se* protection of the debate regulation. In that instance, the Commission must decide if a press entity sponsoring a debate nevertheless acted within the bounds of its press function.

3. *Fox News' Sponsorship of the August 6, 2015 Debate Complied with the Commission's Debate Regulation and, In Any Event, Is Protected by the Press Exemption.*

Fox News conducted the second-tier debate in accordance with the Commission's debate regulation. As the Commission explained in 1995, staging organizations must be able to show

<sup>69</sup> For a more complete summary of the tension between the press exemption and the debate regulation, see Concurring Statement of Commissioner Lee E. Goodman to the Notice of Disposition of Petition for Rulemaking on Candidate Debates (Nov. 9, 2015); see also MUR 5224 (WZB-TV and The Boston Globe).

<sup>70</sup> Concurring Statement of Commissioner Lee E. Goodman to the Notice of Disposition of Petition for Rulemaking on Candidate Debates at 11 (Nov. 9, 2015).

<sup>71</sup> *Candidate Debates and News Stories*, 61 Fed. Reg. 19049, 18052 (Apr. 24, 1996).

<sup>72</sup> *Id.* (citing *Readers Digest*, 509 F.Supp. at 1214).

<sup>73</sup> The Commission's Office of General Counsel agrees that the debate regulation is a useful proxy for assessing "legitimate press function," advising the Commission that "use of objective, pre-established selection criteria not designed to result in the selection of pre-chosen candidates ensures that the media entity is acting within its 'legitimate press function' in staging the debate." First Gen. Counsel Rep. at n. 21. But it cannot be the exclusive test for what press activity qualifies as "legitimate press activity" under the press exemption statute and Free Press Clause of the Constitution.

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that their selection criteria determine the participants, and that the criteria were not designed to result in the selection of certain pre-chosen participants. Section 110.13 thus requires that debate sponsors "use pre-established objective criteria to determine which candidates may participate in [the] debate."<sup>74</sup> As explained below, the record indicates that Fox News's selection criteria were both pre-established and objective.

Fox News used "pre-established" criteria by announcing its final selection criteria on July 27, 2015, which was eight days before those criteria could be satisfied and would operate to select the field of invitees, and ten days prior to the debate. The criteria resulted in the identification of a total of 17 candidates for the two debates on August 6, including seven for the second-tier debate. That Fox News announced an initial set of criteria for the second-tier debate on June 11, 2015, and a final set of criteria on July 27, 2015, does not mean that it failed to set "pre-established" criteria. The Commission's debate regulation does not require selection criteria to be established a certain number of days before a debate nor does it prohibit changing selection criteria before the selection and invitation of debate participants.<sup>75</sup> The key requirements, satisfied here, are that a debate sponsor chooses selection criteria before invitees are selected and that the criteria select the invitees.<sup>76</sup> By finalizing and announcing its selection criteria in advance of determining invitees, and using those criteria to select the invitees, Fox News used "pre-established" criteria.

Fox News also used "objective" criteria by basing its final selection criteria for the second-tier debate on national polls. "[T]o qualify as 'objective,' the criteria need not be stripped of all subjectivity or be judged only in terms of tangible, arithmetical cut-offs. Rather, it appears that they must be free of 'content bias,' and not geared to the 'selection of certain pre-chosen participants.'"<sup>77</sup> The objective criteria may be set to "control the number of candidates participating in" a debate if the staging organization believes there are too many candidates to stage a "meaningful debate."<sup>78</sup>

Fox News announced that the second-tier debate would be open to "those declared Republican presidential candidates whose names were consistently being offered to respondents in major national polls (as recognized by Fox News) leading up to August 4" and who did not qualify for the top-tier debate.<sup>79</sup> Such criteria are sufficiently objective under both federal court

<sup>74</sup> 11 C.F.R. § 110.13(c).

<sup>75</sup> The criteria Fox News announced before July 27, 2015, were to be applied to poll results as of August 4, 2015. Resp. at 3. Accordingly, Fox News's July 27, 2015, criteria were instituted before the earlier criteria ceased to select candidates to be invited to the debate.

<sup>76</sup> See MUR 6703 (WCVE-TV), Factual and Legal Analysis at 5 ("To establish that the criteria were pre-established, the Commission has stated that, '[s]taging organizations must be able to show that their . . . criteria were used to pick the participants.'" (quoting *Corporate and Labor Organization for Better Express Advocacy and Coordination with Candidates*, 69 Fed. Reg. at 54762)).

<sup>77</sup> *Id.* (quoting MURs 4956/4962/4963 (Union Leader, et al.), First General Counsel's Report, at 23).

<sup>78</sup> *Notice of Disposition of Petition for Rulemaking*, 80 Fed. Reg. at 72617; *Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates*, 60 Fed. Reg. at 64262.

<sup>79</sup> Resp. at 3.

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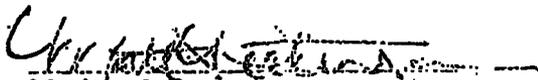
III. CONCLUSION

In sum, the Commission lacks jurisdiction to investigate or punish Fox News' activity with respect to the debate. Fox News was engaged in legitimate press activity when it organized, moderated, and televised the August 6 second-tier debate. Moreover, the record reflects that Fox News complied with the Commission's debate regulation and, therefore, Fox News' payments in connection with the debate *per se* are not contributions or expenditures within the meaning of the Act. Consequently, there is no reason to believe Fox News violated the Act.

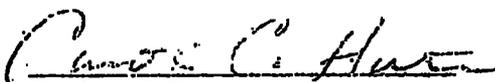
The logical extension of our colleagues' conclusion that Fox News made prohibited contributions to the 17 candidates in the debates it sponsored would be a return to this agency's threat of an injunction against the *Nashua Telegraph* in 1980. This is nothing short of censorship of news coverage, and it is wrong.

This matter raises a broader question: If, as the Federal Communications Commission and a bipartisan majority of the Commission previously concluded, a news organization's sponsorship of a candidate debate is news coverage, then can the Commission ever lawfully punish a news organization for hosting a candidate debate based only on the Commission's disagreement with the news organization's selection of candidates to participate in the debate or the structure of the debate? We think not.

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Matthew S. Petersen  
Chairman

6/23/2016  
Date

  
Caroline C. Hunter  
Commissioner

6/23/16  
Date

  
Lee E. Goodman  
Commissioner

June 23, 2016  
Date





